

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Cellular Service and Other Commercial)
Mobile Radio Services in the Gulf of)
Mexico)

WT Docket No. 97-112

Amendment of Part 22 of the Commission's)
Rules to Provide for Filing and Processing)
of Applications for Unserved Areas in the)
Cellular Service and to Modify Other)
Cellular Rules)

CC Docket No. 90-6

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF TEXAS RSA 20B2 LIMITED PARTNERSHIP

Texas RSA 20B2 Limited Partnership ("Texas RSA LP"), by its attorneys, respectfully submits these Comments in response to the *Second Further Notice of Proposed Rulemaking* ("SFNPRM") released by the Federal Communications Commission ("FCC" or "Commission") on April 16, 1997, in WT Docket No. 97-112 and CC Docket No. 90-6. Texas RSA LP directs its comments to the Commission's treatment of pending applications for modifications to a cellular carrier's Cellular Geographic Service Area ("CGSA") using an alternative CGSA determination pursuant to Section 22.911(b) of the Commission's Rules.

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STATEMENT OF INTEREST

Texas RSA LP currently provides cellular service on the B band frequencies to the Texas 20 -- Wilson Rural Service Area ("RSA") (Market No. 671B) which borders the Gulf of Mexico Service Area ("GMSA"). Texas RSA LP's service area also extends to the islands off the coast of Texas, and Texas RSA LP currently provides service to a portion of Matagorda Island, among others. The

coastal region which Texas RSA LP serves is flat, largely devoid of significant vegetation, and relatively free of man-made structures that might impede signals. The terrain elevation is only a few feet above sea level. Under these conditions, cellular signals propagate over a far wider area than that predicted by the formula in Section 22.911(a) of the Commission's Rules.¹

In order to reflect the actual propagation of signals in this area, on October 2, 1995, before the expiration of its five-year fill-in period on October 3, 1995, Texas RSA LP filed an application for a modification of its CGSA using the alternative CGSA determination method provided for in Section 22.911(b).² In its application, Texas RSA LP proposed modifying the coverage area of two of its cells to reflect the actual coverage within the RSA and to modify its CGSA to reflect this actual coverage.³ Texas RSA LP proposed no alteration of its authorized and operating cellular system, and the CGSA was indicated to be coterminous with the RSA boundary. If granted, the modification to the CGSA would provide CGSA coverage over land area within the RSA which would otherwise be considered "unserved" and available for filing by an unserved area applicant.⁴

On November 22, 1995, RVC Services, Inc. d/b/a Coastel Communications Company ("Coastel") filed a Petition to Deny ("Petition") Texas RSA LP's application.⁵ In the Petition, Coastel argued that Texas RSA LP's application impermissibly extended its coverage into Coastel's

¹ See *SFNPRM* at ¶ 36; Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 90-6, *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, 7 FCC Rcd 7183, 7184 (1992) ("*Unserved Area Third R&O*") (adopting more expansive propagation formula over water).

² FCC File No. 00103-CL-MP-96.

³ Texas RSA LP Application, Exhibit III, p. 1, 3 (filed Oct. 2, 1995).

⁴ See 47 C.F.R. § 22.951.

⁵ Texas RSA LP served a copy of these comments on Coastel.

CGSA which Coastel claimed was coterminous with the entire GMSA. Coastel challenged Texas RSA LP's application on legal grounds, but did not dispute the fact that Texas RSA LP was actually providing coverage within the Texas 20 RSA greater than the coverage predicted by the Section 22.911(a) formula.

COMMENTS

In the *SFNPRM*, the Commission proposes dividing the GMSA into a Coastal Zone and an Exclusive Zone and allowing *de minimis* extensions into the GMSA Coastal Zone that have been granted to land-based carriers to become part of the CGSA of the covering carrier, provided that the authorizations were properly granted under the existing rules.⁶ The Commission nevertheless proposes dismissing all pending applications for *de minimis* extensions into the GMSA Coastal Zone by land-based carriers, and all pending Phase II Applications for unserved areas within the GMSA Coastal Zone.⁷ The *SFNPRM* does not specifically address the treatment of pending applications for an alternative CGSA determination pursuant to Section 22.911(b) of the rules. As Texas RSA LP will explain below, the Commission should not dismiss these applications, but should consider them on a case-by-case basis under the currently existing rules.

I. THE *SFNPRM* FAILS TO ADDRESS THE PROPER DISPOSITION OF PENDING APPLICATIONS FOR SECTION 22.911(b) ALTERNATIVE CGSA DETERMINATIONS

Section 22.911(a) of the rules specifies the method for predicting the Service Area Boundary ("SAB") of a cell based on the physical and technical characteristics of the cell. The method "provides a reasonable approximation of coverage in most land areas...."⁸ Pursuant to

⁶ *SFNPRM* at ¶ 36.

⁷ *Id.* at ¶¶ 41, 53-56.

⁸ 47 C.F.R. § 22.911(c).

Section 22.911(a), the CGSA of a given carrier is the composite of the area within all of the SABs of the cells of a cellular system, excluding areas outside the cellular market boundary. Section 22.912 specifies the conditions under which the predicted SAB can extend outside the cellular market boundary, and Section 22.911(c) specifies the method under which such predicted SAB extensions can become part of the CGSA of the extending carrier.

Section 22.911(b) of the rules provides carriers with an alternative method for determining their CGSAs based on actual coverage and real world conditions when actual coverage within the market differs significantly from the SABs predicted by the Section 22.911(a) methodology.⁹ Under the current rules, areas of actual coverage outside the cellular market boundary as determined by Section 22.911(b) do not become part of the providing carrier's CGSA pursuant to Section 22.911(c).

In the *SFNPRM*, the Commission proposes dismissing all pending applications for *de minimis* extensions by land-based carriers into the GMSA.¹⁰ But applications based on a Section 22.911(b) alternative CGSA determination are not applications for *de minimis* SAB extensions pursuant to Section 22.912 of the rules. Section 22.912 specifies that "SAB extensions are areas outside of the cellular market boundary, but within the service area *as calculated using the methods of Section 22.911(a)*."¹¹ An "extension" is therefore a predicted area of coverage outside

⁹ Section 22.911(b)(3) states:

The provision for alternative CGSA determinations was made in recognition that the formula in paragraph (a)(1) of this section is a general model that provides a reasonable approximation of coverage in most land areas, but may substantially under-predict or over-predict coverage in specific areas with unusual terrain roughness or features, and may be inapplicable for certain purposes....

¹⁰ *SFNPRM* at ¶¶ 55-56.

¹¹ 47 C.F.R. § 22.912 (emphasis added).

the market boundary. Predicted coverage cannot be a “*de minimis* extension” if it is not an “extension” pursuant to Section 22.912(a). Alternative showings under 22.911(b) by definition cannot constitute either extensions or *de minimis* extensions because they are not “calculated using the methods of Section 22.911(a).” The rules do not provide for an “SAB extension” calculated using an alternative CGSA determination. Accordingly, the Commission cannot treat applications for alternative CGSA determinations as applications for *de minimis* extensions and dismiss such applications pursuant to the proposal set forth in the *SFNPRM*.

II. THE COMMISSION SHOULD ADDRESS SECTION 22.911(b) ALTERNATIVE CGSA DETERMINATIONS ON A CASE-BY-CASE BASIS

Section 22.911(b) is the vehicle by which carriers operating in unusual terrain can accurately depict their CGSAs. Section (b) reflects the Commission’s ongoing effort to delineate CGSAs that as nearly as possible reflect the actual reliable cellular service of a given carrier within the carrier’s market boundary.¹² The Commission has clearly recognized that it should not pretend that no cellular coverage exists where actual coverage does exist.

The Commission should not penalize carriers merely because their systems abut the GMSA. Accordingly, the Commission should not dismiss pending applications for alternative CGSA determinations filed by carriers abutting the GMSA. Instead, the Commission should process these applications on a case-by-case basis.

The public interest is served by incorporating areas of actual coverage within a carrier’s market into the carrier’s CGSA. This result is consistent with the *Unserved Area Proceeding*

¹² *SFNPRM* at ¶ 37; see Amendment of Part 22 of the Commission’s Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 90-6, *Second Report and Order*, 7 FCC Rcd 2449 (1992) (subsequent history omitted) (“*Unserved Areas Second R&O*”).

because it reflects actual reliable cellular service. It “enables subscribers to continue to receive uninterrupted cellular service from their current provider.”¹³ It also encourages cellular carriers to “concentrate resources on providing services to unserved areas rather than constructing additional or redundant transmitters in those areas already receiving service.”¹⁴

The Commission would cause injustice to existing licensees by dismissing all pending Section 22.911(b) applications without considering their merits. For example, if the Commission dismisses Texas RSA LP’s Section 22.911(b) application (or the application of any similarly situated land-based provider), then areas within the Texas 20 RSA which Texas RSA LP currently serves will lie outside Texas RSA LP’s CGSA (as predicted under Section 22.911(a)) and will lapse into “unserved areas” under Section 22.911(e).¹⁵ This result is clearly contrary to the Commission’s attempt to define areas of actual coverage in the *Unserved Area Proceeding* because the Commission would be pretending that no service exists in areas where such service in fact exists.

Substantial injustice would result to Texas RSA LP that could not be cured merely by allowing Texas RSA LP to refile its application. Because the five-year build-out period has expired for Texas RSA LP and all carriers with service areas that abut the Gulf,¹⁶ the “unserved areas” within the Texas 20 RSA would be subject to the Phase II unserved area licensing procedures of Section 22.949. Texas RSA LP could file another application to serve these areas (even though it already does serve them) but it would face competing applications. Texas RSA LP might be forced to compete in an auction to serve areas within its RSA that it currently serves. By dismissing Texas

¹³ See *SFNPRM* at ¶ 36.

¹⁴ See *id.*

¹⁵ Pursuant to Section 22.911(e), “Unserved areas are areas outside of all existing CGSAs....”

¹⁶ *SFNPRM* at ¶ 41.

RSA LP's application without consideration, the Commission would unfairly deny Texas RSA LP its exclusive right to expand pursuant to Section 22.947 during the five-year build-out period.

To avoid this harm to existing licensees, the Commission should process all pending applications for alternative CGSA determinations on a case-by-case basis. In the alternative, if the Commission dismisses pending applications for alternative CGSA determinations that were filed before the expiration of the applicant's five year build-out period, the Commission should protect the newly "unserved areas" by granting such applicants 120 days in which to file applications to expand their CGSAs without facing competing applications.

III. THE COMMISSION SHOULD INCORPORATE ALL EXISTING *DE MINIMIS* EXTENSIONS INTO THE COASTAL ZONE INTO THE CGSA OF THE PROVIDING CARRIER

The Commission proposes dividing the GMSA into a Coastal Zone and an Exclusive Zone, and proposes different licensing rules for the two zones. Texas RSA LP supports the Commission's proposal. In the *SFNPRM*, the Commission also concludes that "areas currently receiving service within the Coastal Zone should become part of the associated carrier's CGSA."¹⁷ Texas RSA LP concurs with this conclusion and the Commission's logic that such action serves the public interest by providing uninterrupted service, encouraging service to unserved areas and discouraging redundant facilities.¹⁸

Texas RSA LP also concurs with the Commission's proposal that the CGSA of carriers providing service within the Coastal Zone be limited to the areas that the carrier actually serves.¹⁹ The CGSA of a carrier that reduces service within the Coastal Zone should be reduced to reflect the

¹⁷ *Id.* at ¶43.

¹⁸ *Id.* at ¶ 36.

¹⁹ *SFNPRM* at ¶ 43.

area of actual continued service. While some hardship may result to carriers with transmitters on platforms that move, the public should not be denied service if another carrier is willing and able to provide service to such newly unserved area.

IV. THE COMMISSION SHOULD ALLOW LICENSEES TO MODIFY EXISTING FACILITIES TO BETTER SERVE THEIR MARKETS

As noted in Section III above, Texas RSA LP supports the Commission's protection of incumbent operations within the Coastal Zone and concurs with the Commission's conclusion that such protection serves the public interest. Similar public benefits also could be accomplished by allowing incumbent carriers to make minor alterations to their existing systems to better serve their coastal areas. During the complex evolution of licensing cellular carriers in and around the GMSA, many areas remain unserved not because of technical limitations, but only because of legal disputes and regulatory uncertainty.

For example, although all of Matagorda Island is within Texas RSA LP's market, Texas RSA LP is prohibited from providing service to much of the island because the Gulf licensee was unwilling to allow the inadvertent extension into the GMSA. Neither Texas RSA LP nor the Gulf licensee can serve the remaining portions of the island. The island lacks complete service because Texas RSA LP must shield its antenna on Matagorda Island. This scenario is doubtless repeated up and down the coastline.

Licensees in and abutting the GMSA Coastal Zone could fill-in such unserved areas by making very minor modifications to their systems (as opposed to constructing new facilities) and thereby eliminate many areas of marginal coverage. This would result in expeditious service to the public. Such efficiency modifications to existing systems would encourage cellular carriers to "concentrate resources on providing services to unserved areas rather than constructing additional or

redundant transmitters” in those areas already receiving service or in those areas to which service could be easily delivered.

Accordingly, Texas RSA LP proposes that the Commission open a one day filing window, sixty days from the effective date of the rules adopted in this proceeding, in which existing licensees may propose system modifications that do not require the construction of a new cell in order to increase service within their licensed markets and to serve unserved areas within the GMSA Coastal Zone (even if such areas are less than 50 square miles). The Commission should grant such applications so long as they are not mutually exclusive with any other application filed during the filing window. If two or more applications are mutually exclusive, then the Commission could license the area through competitive bidding.

CONCLUSION

Applications for alternative CGSA determinations are not applications for *de minimis* extensions and pending applications for alternative CGSA determinations should not be dismissed. Instead, the Commission should consider these applications and incorporate the area of actual

coverage into the CGSA of the providing carrier. The Commission should also open a one day filing window in which existing licensees can modify their exiting facilities in order to provide more complete coverage.

Respectfully submitted,

TEXAS RSA 20B2 LIMITED PARTNERSHIP

By: 

Caressa D. Bennet

Gregory W. Whiteaker

Bennet & Bennet, PLLC
1019 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 530-9800

Its Attorneys

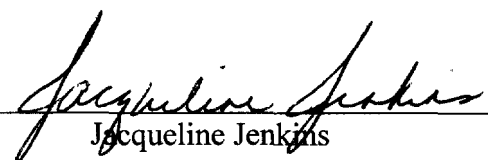
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CERTIFICATE OF SERVICE

I, Jacqueline Jenkins, an employee in the law firm of Bennet & Bennet, PLLC, hereby certify that a copy of the foregoing "Comments of Texas RSA 20B2 Limited Partnership" have been served on the following via first-class, U.S. postage pre-paid mail this 2nd day of June 1997:

Tom W. Davidson, P.C.
Akin, Gump, Strauss, Hauer & Feld, LLP
1333 New Hampshire Avenue, N.W.
Suite 400
Washington, D.C. 200036
Attorney for RVC Services Inc.
d/b/a/ Coastel Communications Co.



Jacqueline Jenkins